

Remarks

Independent claims 1, 18, 35, and 38 have been rejected as unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 5,537,314 to Kanter ("Kanter") and U.S. Patent No. 5,794,221 to Egendorf ("Egendorf"). Applicant respectfully traverses this rejection.

Independent claims 1, 18, 35, and 38 recite, *inter alia*, determining if a third party referred an online buyer to an online seller (hereafter, "online referral feature"). Independent claims 1, 18, 35, and 38 are patentable over Kanter and Egendorf because neither of these references, either alone or in combination, shows or suggests a system or method for determining, in an online context, if a third party referred a buyer to a seller. Applicants acknowledge the Examiner's statement on page 2 of the Official Action that Kanter does not teach an online buyer and seller. Egendorf does not teach any system or method for determining if a third party referred a buyer to a seller, whether online or not. Therefore, even if Kanter and Egendorf were combined as suggested by the Examiner (assuming these references could be combined as suggested by the Examiner, which Applicants do not admit), the online referral feature of claims 1, 18, 35, and 38 is missing and thus is not suggested or taught by these references.

Additionally, even if Kanter and Egendorf could be combined (which Applicants do not admit), the Examiner has not established a *prima facie* case of obviousness because the Official Action fails to identify any teaching, suggestion, or motivation in the prior art, either implicitly or explicitly, that would cause one to make the proposed modification. The Examiner's reliance on

level of skill in the art to provide the suggestion cannot support a *prima facie* case. M.P.E.P. § 2143.01. Indeed, Kanter would have deterred one of ordinary skill from using the Egendorf patent teachings because, on one hand, Kanter aimed to eliminate barriers for consumers to participate in the program while, on the other hand, Egendorf inherently limits participation to a service provider's subscribers. *See e.g.*, Kanter, col., 13, lines 45-48 (The "advantages of my invention are . . . to provide an incentive award program which eliminates the need for applicants to be approved by a lending institution in order to participate in the program."). Because the Examiner has not (and cannot) identify any teaching, suggestion, or motivation in the prior art that would cause one to make the proposed modification, Applicants request that the rejection be withdrawn.

Dependent claims 2-17, 19-34, 36-37 and 39 depend either directly or indirectly from independent claims 1, 18, 35, and 38, and thus contain all of the limitations thereof. Therefore, these dependent claims are patentable over Kanter and Egendorf for the reasons set forth above with respect to claims 1, 18, 35, and 38.

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Summary

Applicants submit that all of the claims are now in condition for allowance, which action is requested. If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 50-1721.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Robert P. Smith", is written over a horizontal line.

Robert P. Smith

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